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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218832 **DATE:** June 6, 1985

MATTER OF: B-K Manufacturing Company

DIGEST:

1. Evidence that two bidders share common officers and directors and have some joint ownership does not establish that the certification of independent pricing was violated. In any case, jurisdiction in such matters is committed to the Attorney General and federal courts, not GAO.
2. Where it is clear that a protest involves matters which GAO does not consider, GAO will dismiss protest without holding a conference which would serve no useful purpose.

B-K Manufacturing Company (B-K) protests the award of a contract by the Department of the Army under solicitation No. DAAH01-84-B-0171 to Metal Masters, Inc. B-K alleges that Metal Masters and McCay Tool & Engineering Co., Inc., another bidder for this contract, share common officers and directors and have some joint ownership. B-K Manufacturing suggests this information is evidence that the award is contrary to the Certification of Independent Price Determination and the statement concerning Parent Company and Identifying Data contained in the solicitation. The crux of B-K's allegations is that there was collusive bidding because of the relationship of the two firms.

We will not consider the protest.

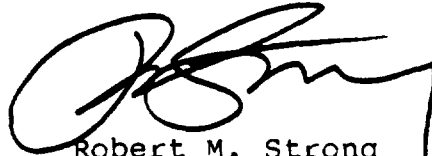
The purpose of a certification of independent pricing is to assure that bidders do not collude to set prices or to restrict competition by inducing others not to bid, which would constitute a criminal offense. See Columbus Marble Works, Inc., B-193754, Aug. 21, 1979, 79-2 C.P.D. ¶ 138. In our view, evidence that two bidders have common officers, directors, or ownership does not establish necessarily that they have conspired in either respect. See Aarid Van Lines, Inc., B-206080, Feb. 4, 1982, 82-1 C.P.D. ¶ 92; Protimex Corporation, B-204821, Mar. 16, 1982, 82-1 C.P.D. ¶ 247.

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In any event, it is within the jurisdiction of the Attorney General and the federal courts to determine what constitutes a violation of a criminal statute, not the General Accounting Office. See Wilkinson Manufacturing Company, B-206334, Feb. 24, 1982, 82-1 C.P.D. ¶ 165. The Federal Acquisition Regulation, 48 C.F.R. §§ 3.103-2(b) and 3.303 (1984), requires that where a Certification of Independent Price Determination is suspected of being false or there otherwise is an indication of collusion, the matter be referred to the Attorney General by the procuring agency. The record shows that B-K protested the certification issue to the Army, and the Army investigated the matter and denied B-K's protest. However, we know of nothing that would prevent B-K from asking the Attorney General to review the matter. See Aarid Van Lines, Inc., B-206080, supra, 82-1 C.P.D. ¶ 92 at 2, and Isratex, Inc., B-218085, Feb. 8, 1985, 64 Comp. Gen. ___, 85-1 C.P.D. ¶ 172.

B-K has requested a conference on the protest as provided for in our Bid Protest Regulations, 4 C.F.R. § 21.5 (1985). However, where, as here, the merits of a protest are not for consideration, no useful purpose would be served by holding a conference. Janel, Inc., B-214036.2, May 22, 1984, 84-1 C.P.D. ¶ 547; 4 C.F.R. § 21.3(f) (1985).

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel